



# Central Valley Clean Water Association

*Representing Over Fifty Wastewater Agencies*

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Sent via email to: [DeltaPlanComment@deltacouncil.ca.gov](mailto:DeltaPlanComment@deltacouncil.ca.gov)

Chairman Isenberg  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

**Re: Central Valley Clean Water Association's Comments Regarding Fifth Staff Draft Delta Plan**

Dear Chairman Isenberg and Council Members:

On behalf of the Central Valley Clean Water Association (CVCWA), we appreciate the opportunity to provide comments to the Fifth Staff Draft Delta Plan (Fifth Draft Plan). CVCWA is a nonprofit association of over 50 agencies who operate Publicly Owned Treatment Works (POTWs) throughout the Central Valley. Our members protect water quality by providing wastewater collection, treatment and water recycling services. Our primary mission is to represent our member agencies in regulatory matters while balancing environmental and economic interests. Many of CVCWA's members will be directly impacted by the Delta Plan and have a significant interest in its development and implementation.

First, to the extent that CVCWA's comments on the previous drafts of the Delta Plan have not been incorporated into the Fifth Draft Plan, we reiterate our concerns stated therein and incorporate them by reference. Specifically, there are still a number of problems with provisions contained in "Chapter 6 - Improve Water Quality to Protect Human Health and the Environment" as well as "Chapter 9 - Finance Plan to Support the Coequal Goals", which have not been addressed. However, in addition to the concerns highlighted in previous comments, there have been several notable changes to the Fifth Draft Plan that also pose significant problems for

CVCWA and its members. A brief overview of those provisions and the manner in which they should be amended is provided here.

**1. *Recommending Development of a Strategic Workplan for Protection of Groundwater Beneficial Uses by December 31, 2012, Is Both Unnecessary and Unrealistic***

The Fifth Draft Plan now contains Recommendation WQ R3, which specifies that the State Water Resources Control Board (State Water Board) and/or the Central Valley Regional Water Quality Control Board (Central Valley Regional Water Board) should complete development of a Strategic Workplan for protection of groundwater beneficial uses, including groundwater use for drinking water, by December 31, 2012. (Fifth Draft Plan, p. 141, 15-18.) The addition of this recommendation is unnecessary and contains an unrealistic timeline for development. First, this recommendation would result in the State Water Board or Central Valley Regional Water Board undertaking a duplicative effort with the existing groundwater strategy already being undertaken by the Central Valley Regional Water Board. Specifically, in August of 2010, the Central Valley Regional Water Board adopted the *Groundwater Quality Protection Strategy: A "Roadmap" for the Central Valley Region*. Moreover, the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins already incorporates the Department of Public Health's drinking water standards as water quality objectives for all groundwater designated as MUN, and thus is already sufficiently protective of groundwater beneficial uses. Additionally, the issue of nutrients in Central Valley ground waters is already being undertaken through the CV-SALTS process, and the deadlines articulated in this requirement do not coincide with the timelines for that effort. CVCWA suggests that rather than requiring the State Water Board or Central Valley Water Regional Board to undertake an entirely new effort in such a short timeframe, the Fifth Draft Plan should simply acknowledge the Central Valley Regional Board's current ongoing efforts and the timelines designated therein, and allow them to provide input and updates based on existing efforts designed to protect groundwater beneficial uses when appropriate.

**2. *Evaluation of Whether Discharge Can Be Recycled or Treated to Reduce Contaminant Loads by January 1, 2014, Is Costly and Unnecessarily Burdensome***

The Fifth Draft Plan has added a date certain of January 1, 2014, to Recommendation WQ R8, which specifies that the Central Valley Regional Water Board should require responsible entities that discharge wastewater treatment plant effluent or urban runoff to Delta waters to evaluate whether all or a portion of the discharge can be recycled, otherwise used, or treated in order to reduce contaminant loads to the Delta by January 1, 2014. (Fifth Draft Plan, p. 149, 10-14.) Currently, this evaluation and analysis as required by Resolution R5-2009-0028, is performed by the appropriate entities on permit cycles of defined increments and submitted to the Central Valley Regional Water Board as part of the permit renewal process in the Report of Waste Discharge (ROWD). The addition of this new requirement that evaluations be performed by a specific date in the very near future separate from the evaluation which takes place during

the preparation of the ROWD would add an extra burden on municipal agencies, especially those agencies who use contract services in preparing the ROWDs, a burden which most of CVCWA's member agencies cannot afford. Moreover, the general reference to all "contaminants" is inappropriate. The process of renewing permits includes a comparison of the quality of effluent to the appropriate water quality criteria for the waterbody. When a POTW has reasonable potential to exceed the water quality criteria, limits and possibly other requirements are put in permits or other mechanisms to protect the water quality of the waterbody and its beneficial uses. Thus, this recommendation is duplicative of state and federal requirements. Adding the target date of January 1, 2014, is simply too soon to realistically evaluate the potential for reducing contaminant loads by individual dischargers to the Delta and will require duplicative and additional requirements on both POTWs and the Central Valley Regional Water Board.

Further, Recommendation WQ-R8 appears to provide a general call for reduced loadings from Central Valley municipalities, which goes beyond established regulatory policies and requirements. (Fifth Draft Plan, p. 149, 10-14.) This recommendation suggests that the Central Valley Regional Water Board should require certain types of treatment merely because such treatment may be feasible, though not necessarily required. It is important to reiterate to the Council that pursuant to Water Code section 13360(a), the Central Valley Regional Water Board may not dictate the manner of compliance. The Central Valley Regional Water Board is required to set effluent limitations for POTWs designed to protect beneficial uses and ensure compliance with water quality standards; however it is then left to the discretion of the POTWs how they will comply with those effluent limitations. Thus, Recommendation WQ R8 proposes a recommendation that directly contradicts applicable water quality laws and must be removed.

**3. *Requiring the Completion of Special Studies by January 1, 2014, Is an Unrealistic Timeline and the Costs of Completion Will Ultimately Fall on POTWs***

The Fifth Draft Plan has added a date certain of January 1, 2014, to the Recommendation WQ R9, which states that the State Water Board and Central Valley Regional Water Board should conduct or require special studies of pollutants including emerging contaminants and causes of toxicity in Delta waters and sediments. (Fifth Draft Plan, p. 149, 15-17.) CVCWA strongly disagrees with the decision to set the target date for these special studies for the near term. Currently, the state does not have the funding to complete these types of special studies, and ultimately the financial responsibility for such studies will fall on POTWs, including CVCWA's members either directly or indirectly. Moreover, the Fifth Draft Plan's discussion of "emerging contaminants" seems to suggest that preemptive regulatory measures should be taken for such pollutants before their levels of concern and associated environmental effects are fully understood. The addition of the 2014 implementation date for conducting these special studies of emerging contaminants is premature, in part because special studies cannot be conducted until an appropriate test methodology is established for such contaminants. Thus, the deadline in the Fifth Draft Plan is unrealistic and fails to account for the necessary prerequisites to completing the relevant studies.

**4. *The Fifth Draft Plan Sets Untenable Deadlines for Adoption of Nutrient Objectives and a Pyrethroid TMDL in the Delta***

The Fifth Draft Plan also recommends several other deadlines that are untenable. For example, Recommendation WQ R6 sets a January 1, 2014 target date for development and adoption of nutrient objectives in the Delta, and a January 1, 2016 completion date for implementation of a Delta pyrethroid TMDL. (Fifth Draft Plan, p. 148, 28-38.) Specifically, that provision recommends that the State Water Board and the Central Valley and San Francisco Bay Regional Water Boards adopt narrative or numeric water quality objectives for nutrients by the beginning of 2014, and complete the Central Valley Pesticide TMDL and Basin Plan Amendment for pyrethroids by the beginning of 2016. Considering the lack of information currently available regarding the complex role of nutrients in the Delta, setting such a deadline for the adoption of nutrient water quality objectives is unreasonable, and is problematic because the scientific basis for conclusions therein may not be fully developed by the specified dates. Moreover, the “Driver Performance Measures” discussion (Fifth Draft Plan, p. 150, 18-19) provides for an ultimate compliance date of 2020 for meeting TMDLs for “critical pesticides” (diazinon, chlorpyrifos, and pyrethroids) in the Delta. This could be problematic because the Central Valley Regional Water Board Pesticide TMDL is currently being developed, and is actually behind schedule. Thus, it is not appropriate for the Fifth Draft Plan to set a specific compliance date when the underlying TMDL adoption is still many years away. That compliance date should be specified in the TMDL itself, not as part of the Fifth Draft Plan. The deadline for a pyrethroid TMDL for the Delta by 2016 is also unrealistic. Currently, there are no existing water quality standards for pyrethroids, and before a TMDL can be established, water quality standards must be adopted into the relevant Basin Plans and approved by United States Environmental Protection Agency. This process alone takes considerable time, and would most likely extend beyond the specified 2016 timeframe.

**5. *The Fifth Draft Plan’s Approach to Stressor Fees and a Delta Funding Structure Remain Problematic***

The stressor fee concept and funding structure contained within the Fifth Draft Plan (and previous drafts of the Delta Plan) continue to be a major concern for CVCWA and its members. CVCWA has commented extensively on the numerous problems with the “stressor fees” approach that has been described in the Delta Plan in the past, and does not reiterate those comments in full here. However, we would like to again point out the following fundamental flaws in the stressor fee approach: (1) the fee proposal is not inclusive of all stressors (see Comment No. 6 below) and is therefore neither fair nor equitable; (2) the stressor fee concept fails to account for numerous fees already paid by POTWs not only toward regulatory oversight, but towards water quality monitoring and planning efforts.; and (3) no credit is given to entities who spend funds to reduce impacts in the Delta.

In addition, CVCWA continues to strongly oppose the Council's proposal to procure ten years of up-front funding for the Council and Conservancy, to ultimately be reimbursed by fee payors. The state should be the entity that incurs start-up costs associated with implementation of the Delta Plan, not fee payors, and the state should not be entitled to reimbursement using later-assessed fee contributions. Moreover, few if any other state agencies have a guaranteed funding source for a ten-year period into the future, and collecting and maintaining such a reserve (at the expense of fee payors) is unprecedented.

To the extent that any fees are levied on municipal agencies, we agree that Delta Plan should include a proposal for legislative changes that would not subjugate the collection of fees by municipalities to Proposition 218 requirements (FP R7). However, we feel it is important that these fees be required to be shown as separate line items on all billings or invoices.

**6. *The Fifth Draft Plan Does Not Reflect the Appropriate Balance Between and Among All Potential Impacts to the Delta Ecosystem***

Finally, the Fifth Draft Plan fails to address the significant role of exports, non-native species, and entrainment on the deterioration of the Delta ecosystem, and does not strike the appropriate balance between identifying contaminants and discharges as "stressors" and discussing the role of exports as a multiple stressor in the Delta. For example, the Fifth Draft Plan fails to include time series charts and other information pertaining to entrainment losses associated with Delta exports since the State Water Project (SWP) and Central Valley Project (CVP) were placed in operation, information that would demonstrate the long term and ongoing impact of exports through those projects on the Delta ecosystem. The Fifth Draft Plan also fails to include specifics regarding the impact of exports on fish species (such as information contained in the August 2010 SWRCB Delta flow criteria document) as well as other entrainment information such as mortality numbers, possible population effects, and a variety of indirect effects on Delta species. The Fifth Draft Plan's failure to include stated goals or performance measures for the reduced loss of fish through entrainment in the South Delta, or for specific activities that would reduce these losses, is a glaring omission that should be rectified, especially considering the importance to any stressor fee determination. These are just a few examples of the overall approach contained in the Fifth Draft Plan, an approach that seems to overemphasize contaminants and discharge as a "stressor" to the Delta ecosystem, but does not, in a balanced way, discuss the significant information that exists regarding the adverse effects of exports and entrainment on that same ecosystem.

CVCWA appreciates the opportunity to comment on the Fifth Draft Plan, and we look forward to reviewing future drafts as the work of the Delta Stewardship Council progresses. If the Council or staff has any questions or concerns, please do not hesitate to contact me at (530) 268-1338.

Very truly yours,

A handwritten signature in cursive script that reads "Debbie Webster".

Debbie Webster  
Executive Officer